

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

SIE JOE LANN,

Plaintiff,

v.

DOUGLAS DRETKE,

Defendant.

§
§
§
§
§
§
§
§

CIVIL ACTION H-04-4446

MEMORANDUM ON DISMISSAL

Plaintiff filed this lawsuit essentially claiming that the Defendants violated his civil rights by keeping lights on 24 hours a day where he is housed. The Defendants moved for summary judgment (Docket Entry No. 16). Plaintiff responded to the motion. In his response he stated the Defendants have changed their lighting policy and no longer illuminate his housing area 24 hours a day. Plaintiff says this policy change renders his claims moot.

Plaintiff seeks voluntary dismissal under FED. R. CIV. P. 41(a). A court exercising its discretion in considering a voluntary dismissal must follow the traditional principle that dismissal should be allowed unless the defendant will suffer some plain prejudice other than the mere prospect of a second lawsuit. *Holiday Queen Land*

Corporation v. Baker, 489 F.2d 1031, 1032 (5th Cir. 1974); *LeCompte v. Mr. Chip, Inc.*, 528 F.2d 601, 604 (5th Cir. 1976). No such prejudice has been shown in the instant case.

Plaintiff's Response to the Summary Judgment Motion, construed as a Motion for Voluntary Dismissal, (Docket Entry No. 17) is GRANTED. This case is DISMISSED without prejudice. It is ORDERED that any fee collection order entered in this case is VACATED. All other pending motions (Docket Entry Nos. 12, 14, 15, and 16) and requests for relief are DENIED as MOOT.

SIGNED at Houston, Texas, on this 15th day of September, 2005.



DAVID HITTNER

United States District Judge